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BS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ OCT 31 2019 ★

BROOKLYN OFFICE

VISHAKH & CRYPTONOMIC, INC.,

Plaintiffs,

v.

KENNETH T. CUCCINELLI, ACTING  
DIRECTOR, UNITED STATES CITIZENSHIP  
AND IMMIGRATION SERVICES,

Defendant.

**STIPULATION AND ORDER  
OF PARTIAL DISMISSAL  
AND AMENDMENT  
OF THE CAPTION**

Civil Action No.  
CV-19-5173 (ARR) (LB)

-x-

**WHEREAS**, in the Complaint filed in the above-captioned action plaintiffs VISHAKH and CRYPTONOMIC, INC. asserts two causes of action under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (“APA”);

**WHEREAS**, the first cause of action challenges as arbitrary and capricious under the APA the denial of defendant KENNETH T. CUCCINELLI, ACTING DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (“USCIS”) of the visa petition submitted on behalf of plaintiff VISHAKH by plaintiff CRYPTONOMIC, INC. seeking employment-based classification under 8 U.S.C. § 1101(a)(15)(H)(i)(B) (“H-1B visa”);

**WHEREAS**, the Complaint filed in the above-captioned action alleges that venue is proper as to plaintiff CRYPTONOMIC, INC. because its principle place of business is Brooklyn, New York;

**WHEREAS**, the second cause of action challenges as unduly delayed under the APA defendant USCIS’s adjudication of plaintiff VISHAKH’s own visa petition for employment-based classification under 8 U.S.C. § 1153(b)(5) (“EB-5 visa”) – a wholly separate benefit from the H-

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Stipulation and Order of Partial Dismissal and Amendment of the Caption  
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H-1B visa that is the subject of the first claim – which cause of action does not contain allegations as to plaintiff CRYPTONOMIC, INC;

**WHEREAS**, the Complaint filed in the above-captioned action fails to allege that this action is properly venued in the Eastern District of New York as to plaintiff VISHAKH or to allege any basis for such venue;

**WHEREAS**, on September 11, 2019, plaintiffs filed the Complaint in the above-captioned action and, on September 18, 2019, filed a motion for a preliminary injunction arguing that plaintiff VISHAKH was being irreparably harmed by the denial of the H-1B visa application;

**WHEREAS**, on September 26, 2019, defendant USCIS re-opened its decision denying the H-1B visa and shortly thereafter approved the H-1B visa; and

**WHEREAS**, plaintiffs concede that their first claim warrants dismissal inasmuch as reopening the H-1B visa decision alone rendered that decision non-final for purposes of the APA, and also that such dismissal should be *with* prejudice inasmuch as, on October 3, 2019, the H-1B visa application was approved:

**IT IS HEREBY STIPULATED AND AGREED** by and between plaintiffs and defendant, by their respective undersigned attorneys, that plaintiffs CRYPTONOMIC, INC.'s and VISHAKH's claim seeking APA review of the H-1B visa decision is hereby dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), without costs or fees to any party as against any other;

**IT IS FURTHER STIPULATED AND AGREED** by and between plaintiffs and defendant, by their respective undersigned attorneys, that the sole remaining claim in this action is plaintiff VISHAKH's APA claim contending that USCIS's adjudication of the EB-5 visa application that he has submitted has been unduly delayed;

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**IT IS FURTHER STIPULATED AND AGREED** by and between plaintiffs and defendant, by their respective undersigned attorneys, that the caption shall be amended to reflect the following:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

VISHAKH,

Plaintiff,

v.

KENNETH T. CUCCINELLI, ACTING  
DIRECTOR, UNITED STATES CITIZENSHIP  
AND IMMIGRATION SERVICES,

Civil Action No.  
No. 19-CV-5173 (ARR)(LB)

Defendant.

-----X

**IT IS FURTHER STIPULATED AND AGREED** by and between plaintiffs and defendant, by their respective undersigned attorneys, that by this Stipulation and Order of Partial Dismissal and Amendment of the Caption (“Stipulation and Order”), defendant does not waive any defenses as to the sole remaining claim, including insufficient service of process and improper venue; and

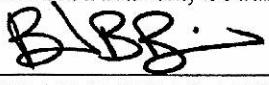
**IT IS FURTHER STIPULATED AND AGREED** that this Stipulation and Order may be executed in separate counterparts and by facsimile signature, each of which shall be deemed to be an original.

*Vishakh, et al. v USCIS*, No. 19-CV- 5173 (ARR) (LB) (E.D.N.Y.)  
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Dated: Mount Pleasant, South Carolina  
October 29, 2019

WASDEN BANIAS LLC  
*Counsel for Plaintiffs*  
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Mount Pleasant, South Carolina 29464

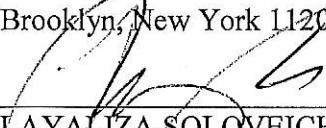
By:

  
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Dated: Brooklyn, New York  
October 29, 2019

RICHARD P. DONOGHUE  
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By:

  
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SO ORDERED this  
29 day of Oct, 2019

  
/s/(ARR)

HONORABLE ALLYNE R. ROSS  
U.S.D.J. E.D.N.Y.